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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

KENNY DORSEY, individually and on  
behalf of all others similarly situated  
and the general public,

Plaintiff,

v.

ROCKHARD LABORATORIES, LLC,  
a Georgia Limited Liability Company,  
and ROCKHARD LABORATORIES  
HOLDINGS LLC, a Georgia Limited  
Liability Company.

Defendants.

Case No: **CV 13-7557 DDP-RZ**

CLASS ACTION

**COMPLAINT FOR:**

1. VIOLATION OF CALIFORNIA  
CONSUMERS LEGAL  
REMEDIES ACT [CIV. CODE §§  
1750, *et seq.*]
2. VIOLATION OF CALIFORNIA  
UNFAIR COMPETITION LAW  
[BUS. & PROF. CODE §§ 17200,  
*et seq.*]
3. VIOLATION OF CALIFORNIA  
FALSE ADVERTISING LAW  
[BUS. & PROF. CODE §§ 17500, *et  
seq.*]
4. BREACH OF EXPRESS  
WARRANTY
5. BREACH OF IMPLIED  
WARRANTY OF  
MERCHANTABILITY
6. VIOLATION OF THE  
MAGNUSON-MOSS  
WARRANTY ACT [15 U.S.C. §§  
2301, *et seq.*]

DEMAND FOR JURY TRIAL

*DORSEY V. ROCKHARD LABORATORIES, LLC, ET AL.*

COMPLAINT

1           1.     Plaintiff Kenny Dorsey, on behalf of himself, all others similarly situated,  
2 and the general public, alleges against Defendants RockHard Laboratories, LLC and  
3 RockHard Laboratories Holdings LLC (collectively "Defendants" or "RockHard") the  
4 following upon their own knowledge, or where there is no personal knowledge, upon  
5 information and belief and the investigation of their counsel:

6                               **JURISDICTION AND VENUE**

7           1.     This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2), as  
8 amended by the Class Action Fairness Act of 2005, because the matter in controversy,  
9 exclusive of interest and costs, exceeds the sum or value of \$5,000,000, and is a class  
10 action where Plaintiff and class members are from a different state than Defendants.  
11 Further, all other members of the class are citizens of a state different from Defendants.  
12 This Court also has original jurisdiction under the Magnuson-Moss Warranty Act  
13 pursuant to 28 U.S.C. § 1331 and 2310(d)(1)(b). This Court has supplemental  
14 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

15           2.     This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §  
16 1332(a)(1) because Plaintiff and the putative class are citizens of the State of California,  
17 Defendants reside in the state of Georgia and the amount in controversy exceeds the sum  
18 or value of \$75,000, exclusive of interests and costs.

19           3.     Personal jurisdiction is derived from the fact that Defendants conduct  
20 business within the State of California and within this judicial district.

21           4.     Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(2) because  
22 many of the acts and transactions occurred in this district and because Defendants:

- 23                   a.     are authorized to conduct business in this district and have  
24 intentionally availed themselves of the laws and markets within this  
25 district through the promotion, marketing, distribution and sale of  
26

1                   their products in this district;

2                   b.     do substantial business in this district;

3                   c.     advertise to consumers residing in this district; and

4                   d.     are subject to personal jurisdiction in this district.

5                   **PARTIES**

6           5.     At all times relevant to this matter, Plaintiff Kenneth Dorsey was a resident  
7 of Los Angeles, California.

8           6.     On information and belief, at all times relevant to this matter, Defendant  
9 RockHard Laboratories, LLC was a Georgia limited liability company that maintains its  
10 principal place of business, corporate headquarters and residence in Alpharetta, Georgia.

11          7.     On information and belief, at all times relevant to this matter, Defendant  
12 RockHard Laboratories Holdings, LLC was a Georgia limited liability company that  
13 maintains its principal place of business, corporate headquarters and residence in  
14 Alpharetta, Georgia.

15          8.     Members of the putative class are citizens of California.

16          9.     Defendants are the manufacturers and sellers of a male sexual enhancement  
17 product under name RockHard Weekend.

18          10.    Defendants produce, market and sell the RockHard Weekend brand product  
19 throughout the United States, including California.

20          11.    Plaintiff is informed and believes and thereon alleges that at all times  
21 mentioned herein, Defendants and Defendants' employees were the agents, servants and  
22 employees of the Defendants, acting within the purpose and scope of that agency and  
23 employment.

24                   **FACTUAL ALLEGATIONS**

25          12.    This is a consumer protection class action lawsuit on behalf of purchasers of  
26

1 Defendants' RockHard Weekend ("RockHard Weekend" or "Product") male sexual  
2 enhancement product.

3 13. Defendants manufacture, advertise, distribute and sell their Product in over-  
4 the-counter ("OTC") aisles in major retail stores throughout California.<sup>1</sup>

5 14. Defendants primarily advertise and promote RockHard Weekend through  
6 uniform labeling claims on the front of the Product's package. Label descriptions on the  
7 Products' packaging, taken as a whole, represent there are various benefits and  
8 characteristics to the Products.

9 15. Defendants' Product is also the subject of an extensive and comprehensive  
10 advertising and marketing campaign in various media including the internet. *See*  
11 *www.RockHardweekend.com*.

12 16. Defendants' Product primarily consists of a proprietary blend of small  
13 amounts of extracts from herbs, roots, and other organic substances, some of which are  
14 purported to enhance "sexual performance" of the human male.

15 17. Defendants represent RockHard Weekend as a "sexual performance  
16 enhancer for men," and claim the Product is "Doctor Tested," "Doctor Approved," "may  
17 [be] use[d] with Alcohol," has "No Side Effects," "Works in 30 Minutes," causes  
18 "Enhanced Orgasms," is "Fast & Effective," provides "RockHard Results" that are  
19 "bigger and better," available "on-demand," will maintain "MAXIMUM performance,"  
20 and "Enhance[] orgasms." Defendants also advertise RockHard Weekend as having "All  
21 Natural" ingredients, even though some of the Product's ingredients are synthetic,  
22 chemically reduced and/or have carcinogenic properties. Defendants also market a single  
23 RockHard Weekend pill as "The Weekender" for a "RockHard Weekend," and "The 72

24  
25 <sup>1</sup> See Defendants' advertised sales locations for RockHard Weekend,  
26 <http://www.RockHardweekend.com/#4>. (Last visited August 13, 2013.)

1 Hour Sexual Performance Pill for Men,” yet there is no evidence a single capsule of  
2 RockHard Weekend provides enhanced sexual male performance throughout the course  
3 of a weekend, which typically spans from 48 to 72 hours. The small print on the pack of  
4 the Product’s packaging states that consumers should “take one capsule every 24 hours”  
5 only bolsters this point. Further, none of the ingredients in RockHard Weekend have  
6 been shown by any scientific human study to enhance male sexual performance, in  
7 particular, when present in the miniscule quantities contained in the Product.  
8 Consumption of some of the Product’s ingredients, such as Korean Ginseng, Gingko  
9 Biloba and Maca Root Extract also present a risk of an allergic or adverse reaction  
10 without any offsetting benefits.

11 18. During the class period, starting in or around April 2011 and continuing until  
12 in or around June 2011, Plaintiff purchased Defendants’ RockHard Weekend from B&B  
13 Liquor, located on Western Avenue in the City and County of Los Angeles California, for  
14 approximately \$30 per bottle.

15 19. In purchasing RockHard Weekend, Plaintiff relied upon various  
16 representations Defendant made on the Products’ labels, including but not limited to:  
17 “Doctor Tested,” Doctor Approved,” “may [be] use[d] with Alcohol,” has “No Side  
18 Effects,” “Works in 30 Minutes,” causes “Enhanced Orgasms,” is “Fast & Effective,”  
19 provides “RockHard Results” that are “bigger and better,” available “on-demand,” will  
20 maintain “MAXIMUM performance,” “Enhance[] orgasms,” “All Natural” “The  
21 Weekender,” “RockHard Weekend,” and “The 72 Hour Sexual Performance Pill for  
22 Men.”

23 20. Plaintiff used Defendants’ Product pursuant to the instructions on its  
24 respective packaging.

25 21. Defendants’ Product did not work for Plaintiff as advertised.

22. Absent the material misstatements described herein, Plaintiff would not have purchased RockHard Weekend.

### **RockHard Weekend Product**

23. Defendants' RockHard Weekend is marketed, packaged and sold in a single pill form, which primarily consists of a proprietary blend of small amounts of extracts from herbs, roots, and other organic substances, some of which are purported to have an effect on the human body.

24. Defendants, by means of their RockHard Weekend proprietary blend, claim their Product will enhance "sexual performance" of the human male.

25. Yet none of the ingredients in RockHard Weekend, however, have ever been found by any scientific human study to enhance male sexual performance, in particular, when present in the miniscule quantities contained in the Product.

26. The consumption of the heterogeneous herbs and herbal extracts found in RockHard Weekend, such as Korean Ginseng, Gingko Biloba and Maca Root Extract also present risks of allergic, adverse or potentially life-threatening reactions without any offsetting benefits if consumed.

### **Specific Misrepresentations and Deceptive Acts About RockHard Weekend**

27. **Misleading supplement name:** Defendants prominently label their Product under the name "The Weekender™" and "RockHard Weekend" despite no evidence its effects, if any, last more than 24 hours. *See Fig. 2.*

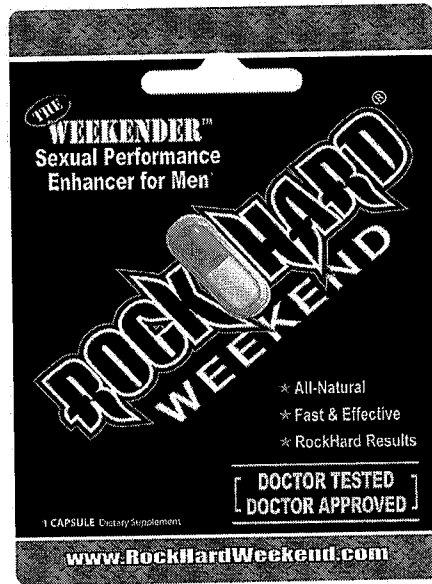
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**Figure 2. Front Label**

28. Defendants' use of the words "Weekend" and "Weekender" in promoting its Product suggest that a single dose of RockHard Weekend should produce results that last 48 to 72 hours, but Defendants' own package labeling states that "[t]o maintain MAXIMUM performance take *one* capsule every 24 hours." See Fig. 4 (emphasis added). Defendants are fully aware their Product does not enhance sexual performance at all, let alone for as long as 48 to 72 hours, inasmuch as Defendants have already stopped using advertising that claimed "72 Hour Sexual Performance."

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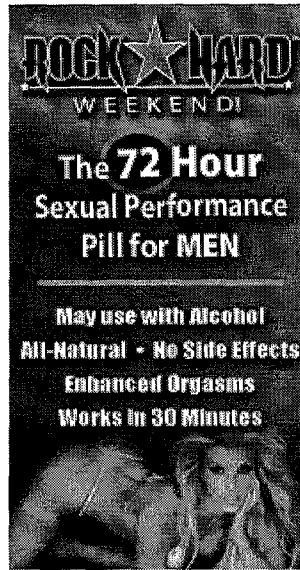
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**Figure 3. Discontinued “72-Hour” Advertising**

29. **Misleading sub-headings:** The front of the RockHard Weekend label (see Figure 2) features the misleading sub-heading “Sexual Performance Enhancer for Men,” suggesting that Defendants’ proprietary blend works as advertised.

30. Furthermore, the label features (beneath the diagonal printing of “ROCKHARD WEEKEND”) misleading sub-headings in large bulleted and bolded words “All-Natural,” “Fast & Effective,” “RockHard Results,” “DOCTOR TESTED” and “DOCTOR APPROVED.” These claims are false and misleading as set forth herein:

a. “All-Natural.” This claim is misleading and false because a reasonable consumer would expect an “all-natural” product to contain ingredients found in nature, derived from natural sources, which are wholesome and safe, whereas reference to the ingredients panel (Fig. 3) indicates that Defendants’ Product contains:

- i. L-arginine, which, although it occurs in nature, is chemically synthesized for use in supplements such as Defendants’ Product;
- ii. magnesium stearate, a compound not found in nature, which is produced by



1 the chemical processing of animal or vegetable oil, and is used as a lubricant and anti-  
2 adherent in the manufacture of Product capsules;

3     iii.     silicon dioxide, an anti-caking agent equivalent to quartz dust, which can be  
4 an irritant and carcinogen if inhaled; and

5     iv.     FD&C Blue #1, a synthetic, carcinogenic chemical dye that, although  
6 approved for use as a food coloring, is sometimes contaminated with arsenic and lead  
7 during manufacture.

8     b.     “Fast & Effective.” This subheading is false because it suggests to  
9 consumers that RockHard Weekend actually enhances the sexual performance of males,  
10 whereas the product does not, in fact, have any performance-enhancing activity, except  
11 perhaps in certain manufacturing lots that have been found to be spiked with dangerous  
12 sildenafil analogues (Chinese counterfeit Viagra).<sup>2</sup>

13     c.     “RockHard Results.” This subheading is misleading and false because,  
14 when taken in the context of the adjacent claims of male sexual performance  
15 enhancement, it suggests to a reasonable consumer that the “results” of taking the Product  
16 will be a “rock-hard” erection of the male consumer’s penis, whereas, in fact, the Product  
17 does not facilitate erections when taken, as set forth herein.

18     d.     “DOCTOR TESTED; DOCTOR APPROVED.” These claims are false and  
19 deceptive because a reasonable consumer is likely to believe the Product is used,  
20 endorsed, or recommended by doctors practicing medicine in clinical settings, which  
21 promotes consumer confusion and lends unwarranted legitimacy to the Product. In fact,  
22 Defendants have not and cannot cite any research studies or unsolicited endorsements of  
23

24 <sup>2</sup> See “RockHard Laboratories Issues a Voluntary Recall of Specific Lots of the Dietary  
25 Supplements RockHard Weekend and Pandora.”  
26 <http://www.fda.gov/Safety/Recalls/ucm237999.htm> (Viewed August 11, 2013.)

RockHard Weekend by medical doctors, nor is RockHard Weekend used in clinical settings for the treatment of male impotence or any other condition.

31. The combined effect of these misleading statements, together and in context with other labeling claims, is that Defendants falsely suggest there is a scientific and/or research basis for claims about RockHard Weekend.

32. None of the Product's purportedly efficacious ingredients (L-arginine, Korean Ginseng, Ginkgo Biloba and Maca Root, *see* Figure 4), however, have ever been shown in any scientific study to enhance human male sexual performance.

*Directions: Take one capsule 30 minutes prior to sexual activity. To maintain MAXIMUM performance take one capsule every 24 hours. Results work best when physically stimulated.*

<b>Supplement Facts</b>		
Serving Size: 1 Capsule		
Servings Per Container: 3		
Vitamin B3 (Niacin)	15mg	100%
Proprietary Blend	850mg <sup>1</sup>	
L-arginine, Korean Ginseng, Ginkgo Biloba, Maca Root Extract		
<sup>1</sup> Daily Value not established.		
Other Ingredients: Magnesium Stearate, Silicon Dioxide, Gelatin, FD&C Blue #1		

**What is RHW?**  
RockHard Weekend is a lifestyle. It's a party. It's living a life worth bragging about. You want to be a hero in the bedroom? Take RockHard Weekend.

**Who Should Take RHW?**  
You're a ladies man. Married or single, you are looking for a recreational edge in bed. You don't need it, you're just looking to party!

**Why Should You Take RHW?**  
You want an even bigger and better experience! You're not looking for a "once-daily" commitment, but a rock hard, on-demand weekend!

**When Should You Take RHW?**  
Friday night with a six-pack in hand! In Vegas with the boys! On Vacation with the wifey! Whenever you are ready to rock!

*\* These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.*

Manufactured for:  
RockHard Laboratories  
Alpharetta, GA 30005  
sales@rockhardweekend.com

8 53264 00300 9

**Figure 4. Back Label**

1                   **RockHard Weekend's Ingredients Do Not Enhance Sexual Performance**

2           33. RockHard Weekend is comprised of the following ingredients: Vitamin B3  
3 (Niacin), L-Arginine, Korean Ginseng, Gingko Biloba, and Maca Root Extract. Yet if  
4 consumed, these ingredients have not been shown to enhance sexual performance in men,  
5 but may actually cause allergic, adverse and/or life threatening reactions.

6           34. **Vitamin B3 (Niacin).** Niacin, in high multiples of the established Daily  
7 Value, may be effective in improving overall vascular health when taken over time.  
8 Niacin is also a member of the B complex group of vitamins. B vitamins are depleted by  
9 stressful lifestyles and B vitamin supplements may be effective relieve symptoms of  
10 stress. However, no relation between niacin and sexual performance has been established  
11 by any research study whatsoever, and Defendants' implicit claims that niacin in the  
12 Product enhances male sexual performance are therefore false and misleading to a  
13 reasonable consumer.

14           35. **L-Arginine.** L-arginine is a "semi-essential" amino acid; although humans  
15 can make arginine via metabolic pathways, additional arginine is often required to meet  
16 nutritional requirements.<sup>3</sup> Nitric oxide (NO) is a "free radical" that functions to facilitate  
17 the relaxation of certain muscles required to permit erection of the human penis.  
18 Elevated NO levels in the bloodstream have been shown provide temporary relief of  
19 erectile dysfunction. Therapeutic agents for erectile dysfunction, such as sildenafil  
20 (Viagra) and tadalafil (Cialis), raise NO levels via enhancement of nitric oxide synthase  
21 activity. L-arginine is one of the substrates for nitric oxide synthase; in other words, L-  
22 arginine, if present in excess of nutritional needs, may be enzymatically processed to  
23 raise NO under certain conditions. L-arginine itself, however, does not increase nitric

24 \_\_\_\_\_  
25 <sup>3</sup> Humans normally obtain sufficient L-arginine via consumption of dairy products,  
26 seafood and a variety of grains and nuts.

oxide synthase activity as do compounds such as sildenafil, tadalafil and pycnogenol.<sup>4</sup> Oral supplements of L-arginine have been given to experimental subjects as a substrate for nitric oxide synthase in studies that demonstrated statistically significant alleviation of erectile dysfunction due to the administration of pycnogenol<sup>5</sup>. However, control groups given only L-arginine showed no improvement in erectile function.<sup>6</sup> RockHard Weekend contains no pycnogenol or any other enhancer of nitric oxide synthase activity, therefore any L-arginine in the product cannot be effective to improve erectile function.

36. Defendants' implicit claims that L-arginine in the Product enhances male sexual performance are therefore false and misleading to a reasonable consumer.

37. **Korean Ginseng.** "Korean Ginseng" is one widely-used name for Panax ginseng, the most common form of ginseng found in the Far East. Ginseng is an oriental root surrounded by mystique stemming from centuries of tradition touting its miraculous powers to increase strength and endurance. However, most of the clinical studies investigating the value of Panax ginseng in enhancing physical performance have shown no clinical effect.<sup>7</sup>

38. One publication from Korea ("Korean Study") indicated that Korean Ginseng significantly mitigated erectile dysfunction when subjects received high doses of Korean Ginseng.<sup>8</sup> Subjects of the Korean Study received 900 milligrams of standardized Ginseng, three times a day, *i.e.*, a total of 2.7 grams daily. For comparison, a dosage of

<sup>4</sup> "Pycnogenol" is a patented extract of maritime pine bark.

<sup>5</sup> R. Stanislavov & V. Nikolova, *Treatment of Erectile Dysfunction with Pycnogenol and L-arginine*, 29 J. Sex & Marital Therapy 207 (2003).

<sup>6</sup> *Ibid.*

<sup>7</sup> M.S. Bahrke & W.R. Morgan, *Evaluation of the ergogenic properties of ginseng: an update*, 29 Sports Medicine 113 (2000).

<sup>8</sup> B. Hong, et al., *A Double-Blind Crossover Study Evaluating the Efficacy of Korean Red Ginseng in Patients with Erectile Dysfunction: a Preliminary Report*.

1 200 milligrams per day is considered a normal dietary supplement of Ginseng<sup>9</sup>, and, as  
2 set forth herein, the actual standardized ginseng content of a single capsule of the Product  
3 is some small fraction of 850 milligrams of a “proprietary blend” contained in each  
4 capsule. *See* Fig. 4. Thus, several RockHard Weekend capsules at a time would need to  
5 be taken, three times a day, to begin to approach the doses used in the Korean Study. The  
6 high daily doses of ginseng required to achieve the Korean Study’s reported erectile  
7 enhancement would only increase the risk of serious side effects reported to accompany  
8 use of Ginseng, including nausea, diarrhea, headaches, nose bleeds, high blood pressure,  
9 and low blood pressure.<sup>10</sup>

10 39. Defendants’ packaging states the Product’s “proprietary blend” of L-  
11 arginine, Korean Ginseng, Gingko Biloba and Maca Root extract is present as 850  
12 milligrams per capsule, without stating in what proportions the four ingredients are  
13 present in the “blend.” Defendants’ sell the Product, presumably at a profit, for less than  
14 \$2.00 per capsule in quantities of 16 under a “two-for-one” promotion on their website.<sup>11</sup>  
15 Accordingly, the amount of Ginseng present per capsule of Product is quite small in view  
16 of the price of Panax ginseng, which costs \$7.50 to \$10.00 per gram of standardized  
17 ginseng content.<sup>12</sup> Therefore, taking a single RockHard Weekend capsule every 24  
18 hours, as recommended on the Product’s rear label (*see* Figure 4), has a negligible effect  
19 on erectile dysfunction due to the miniscule amount of ginseng present in the Product.

20 40. Moreover, Defendants’ do not recommend their Product for men with  
21 erectile dysfunction but rather for men who “don’t need it,” are “just looking to party,”  
22

23 <sup>9</sup> D. Kiefer & T. Pantuso, *Panax Ginseng*, 68 Am. Family Physician 1539, 1540 (2003).

24 <sup>10</sup> Kiefer at 1541.

25 <sup>11</sup> *See* <https://www.rhlaboratories.com/checkout/>. (Visited August 14, 2013.)

26 <sup>12</sup> Kiefer at 1540.

1 and who are “looking for a recreational edge in bed.” See Fig. 4. The results of the  
 2 Korean Study, whatever they may mean, are thus ultimately irrelevant to Defendants’  
 3 claims that the small amounts of Korean Ginseng present in RockHard Weekend can  
 4 have any ability whatsoever to enhance male sexual performance of the type for which  
 5 Defendants’ claim the Product is effective, *i.e.*, “recreational” sex “on-demand.”

6 41. In sum, Defendants’ claims the Korean Ginseng contained in the Product  
 7 enhances male sexual performance are false, misleading and would deceive a reasonable  
 8 consumer exposed to Defendants’ packaging of RockHard Weekend capsules.

9 42. **Ginkgo Biloba.** Ginkgo Biloba is often said to improve circulation, but  
 10 there are no clinical studies demonstrating any “sexual performance enhancement”  
 11 attributable to ingestion of Ginkgo Biloba. Studies of sexually dysfunctional individuals  
 12 showed no benefits from Ginkgo Biloba.<sup>13 14</sup> The Ginkgo Biloba in RockHard Weekend  
 13 contains ginkgolic acids<sup>15</sup>, which are highly allergenic, as well as long-chain alkylphenols  
 14 such as bilobol, which are closely related to inflammatory molecules found in poison  
 15 ivy.<sup>16</sup> All of these may produce dangerous and possibly life-threatening reactions to  
 16 those who consume the Product.

17  
 18 <sup>13</sup> B.J. Kang, *et al.*, “A Placebo-Controlled, Double-Blind Trial of Ginkgo Biloba for  
 19 Antidepressant-Induced Sexual Dysfunction,” 17 Human Psychopharmacology 279–284  
 (2002).

20 <sup>14</sup> D. Wheatley, “Triple-Blind, Placebo-Controlled Trial of Ginkgo Biloba in Sexual  
 21 Dysfunction Due to Antidepressant Drugs,” 19 Human Psychopharmacology 545-548  
 (2004).

22 <sup>15</sup> Xian-guo, *et al.*, “High-Performance Liquid Chromatography-Electrospray  
 23 Ionization-Mass Spectrometry Study of Ginkgolic Acid in the Leaves and Fruits of the  
 Ginkgo Tree (*Ginkgo Biloba*),” 38 Journal of Chromatographic Science 169-173 (2000).

24 <sup>16</sup> K. Schötz, “Quantification of Allergenic Urushiols in Extracts of Ginkgo Biloba  
 25 Leaves, In Simple One-Step Extracts and Refined Manufactured Material (EGb 761),” 15  
 Phytochemical Analysis 1–8 (2004).



43. Accordingly, Defendants' implicit claims that Ginkgo Biloba in the Product enhances male sexual performance are therefore false and misleading to a reasonable consumer.

44. **Maca Root Extract.** Maca root is obtained from the Maca plant, which is native to high-altitude regions in the Andes Mountains. Maca's inclusion in RockHard Weekend, although unexplained by Defendants, may be based on a popular myth, which has no legitimate historical or scientific basis. This myth features pre-Columbian Incan imperial warriors consuming large quantities of Maca Root before battle, giving them superhuman strength in combat and an astonishing virility afterwards.<sup>17</sup> A 2010 review of the extant evidence for the effect of Maca Root on libido, however, found little or no support for its aphrodisiac claims.<sup>18</sup>

45. Moreover, Defendants' "proprietary blend" used in RockHard Weekend capsules does not contain Maca Root itself, but rather a "Maca Root Extract." Defendants' provide no indication what relation this "extract" has to authentic Maca Root, making any purported benefits of Maca Root inapplicable to RockHard Weekend.

46. Accordingly, Defendants' implicit claims that the Maca Root Extract contained in the Product enhances male sexual performance are false, misleading and would deceive a reasonable consumer exposed to Defendants' packaging of RockHard Weekend capsules.

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<sup>17</sup> See, e.g., "Maca: Peru's Natural Viagra,"

[http://www.envirohealthtech.com/maca\\_article.htm](http://www.envirohealthtech.com/maca_article.htm). (Viewed August 15, 2013.)

<sup>18</sup> B.-C. Shin, *et al.*, "Maca (*L. Meyenii*) for Improving Sexual Function: A Systematic Review," 10 BMC Complementary and Alternative Medicine 44 (2010). See <http://www.biomedcentral.com/1472-6882/10/44>. (Viewed August 15, 2013.)



**Misleading Statements on Rear Label of Product**

47. The rear label of RockHard Weekend prominently asks and answers a series of rhetorical questions about the Product that further mislead and deceive consumers.

48. The first question asks, “What is RHW?<sup>19</sup>”; and then answers “RockHard Weekend is a lifestyle. It’s a party. It’s living a life worth bragging about. You want to be a hero in the bedroom? Take RockHard Weekend.”

49. Such claims, alone, and even more so taken together with the rest of the label, convey a misleading impression of what the Product will do for the consumer, implying that Defendants’ proprietary blend offers consumers entrance to a “lifestyle” and a “party.” Further, it implies that if the consumer will “take RockHard Weekend,” his sexual prowess will make him a “hero” in bed, and promises that taking the Product will result in improved self-esteem, *i.e.*, “a life worth bragging about.” Such an implication is false and the statement, and taken together with the rest of the package, is misleading.

50. The second question asks, “Who Should Take RHW?” In bolded, reverse white type against a dark background the labeling answers that RHW is appropriate for “a ladies[*sic*] man” who is “married or single,” seeking a “recreational edge in bed,” who is “looking to party.” The statements are patently false and misleading inasmuch as the Product does not, in fact, enhance sexual performance, let alone offer a “recreational edge” to sexually active “ladies’ men.” While many consumers may indeed be “looking to party,” the ingredients in RockHard Weekend provide no such euphoric virility.

51. The third question asks, “Why Should You Take RHW?” and answers itself with the assertion that “[y]ou want an even bigger and better experience! You’re not

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<sup>19</sup> An acronym used by Defendants to signify “RockHard Weekend.”

1 looking for a ‘once-daily’ commitment, but a rock hard, on-demand weekend!” Taken in  
 2 context with the suggestive sexually-charged language of the rest of the back label, this  
 3 sentence makes the dual implication the Product will endow the male consumer with a  
 4 “bigger” penis that is also “rock hard, on-demand,” *i.e.*, that the consumer need only take  
 5 one capsule to both enlarge his penis and enable himself to perform sex acts whenever he  
 6 desires over the course of a weekend, not merely “once-daily” but, at minimum, two or  
 7 more times each day.

8 52. Other companies marketing herbal supplements have been forced to settle  
 9 claims against them for falsely claiming their products would enlarge the penises of  
 10 consumers. For example, in 2006 the makers of ExtenZe (“Biotab”) agreed to pay the  
 11 Orange County district attorney’s office \$300,000 in civil penalties for false advertising  
 12 and unfair business practices, in part for advertisements claiming that claimed that  
 13 ExtenZe would enlarge the penises of users.<sup>20</sup> In 2010, a Los Angeles County court gave  
 14 preliminary approval to a settlement under which Biotab agreed to a settle a class action  
 15 regarding ExtenZe for at least \$6 million, and, *inter alia*, agreed to remove all “Get  
 16 Bigger, Get Wider” claims from their advertising.<sup>21</sup> Then, in 2011, Orange County won  
 17 an additional settlement of \$1.75 million from Biotab “for multiple violations of  
 18 consumer protection laws, including falsely advertising that use of their product results in  
 19  
 20  
 21

22 <sup>20</sup> D. Haldane, “Enhancement Marketer Is Fined for False Advertising,” Los Angeles  
 23 Times, July 25, 2006, *available at* <http://articles.latimes.com/2006/jul/25/local/me-extenze25>. (Viewed August 15, 2013.)

24 <sup>21</sup> *Williams v. Biotab Nutraceuticals, Inc.*, Sup. Ct. (Calif.) consolidated cases BC414808  
 25 and BC415948. Stipulation and Agreement of Settlement retrievable at  
 26 <http://www.casewatch.org/civil/extenze/settlement.pdf>. (Viewed August 15, 2013.)

1 increased penis size.”<sup>22</sup>

2 53. Several of the officers of another manufacturer of “male enhancement” pills,  
3 Berkeley Premium Nutraceuticals, were tried on federal criminal charges; testimony  
4 established that Berkley employees had fabricated the content of advertising claiming to  
5 prove that Berkeley’s ingestible product, Enzyte, would increase penis size.<sup>23</sup>

6 54. Accordingly, Defendants’ implied and express claims are both false and  
7 misleading as set forth herein, inasmuch as no ingestible supplement can enlarge the  
8 penis and because none of the various ingredients of RockHard Weekend have any effect  
9 on male sexual performance.

#### 10 Unlawful Aphrodisiac Claims

11 55. The labeling described above, including but not limited to: “The  
12 Weekender,” “Sexual Performance Enhancer for Men,” “RockHard Results,” “You want  
13 to be a hero in the bedroom? Take RockHard Weekend,” and “...you are looking for an  
14 edge in bed,” alone and in context with other labeling claims and packaging graphics,  
15 evidence RockHard Weekend’s intended use as an aphrodisiac, to arouse or increase  
16 sexual desire or improve sexual performance.

17 56. Pursuant to Title 21 of the Code of Federal Regulations, Part 310.528 (21  
18 CFR § 310.528) any OTC drug product that is labeled, represented, or promoted for use  
19 as an aphrodisiac, like RockHard Weekend, is regarded as a “new drug” within the  
20 meaning of section 201(p) of the FDCA (located at 21 U.S.C. § 355(p)).

21  
22 <sup>22</sup> See <http://www.orangecountyda.com/home/index.asp?page=8&recordid=2471>.  
(Viewed August 15, 2013.)

23 <sup>23</sup> “Ads for Male Enhancement Pill Bogus, Former Exec Says,” Columbus Dispatch,  
24 January 16, 2008. See  
25 <http://www.dispatch.com/content/stories/local/2008/01/16/enzyte.html>. (Viewed August  
26 15, 2013.)

1        57. The FDCA requires any new drug to have an application approved by the  
 2 Food and Drug Administration (“FDA”) before the drug can be marketed to the public,  
 3 and further that the drug’s label be approved by the FDA prior to marketing or selling the  
 4 drug to the public. *See, generally, id.*; 21 U.S.C. §§ 355(a), (b) [New Drug Application],  
 5 (j) [Abbreviated New Drug Application, for generic drugs].

6        58. Defendants’ Product violates Section 505(a) of the FDCA because the  
 7 adequacy of the labeled directions for its “aphrodisiac” uses has not been approved by the  
 8 FDA prior to RockHard Weekend being marketed to the public (*see* 21 U.S.C. §  
 9 355(a)).<sup>24</sup> Accordingly, the Product is misbranded under section 502(f)(1) of the FDCA  
 10 (located at 21 U.S.C. § 352).

11        59. Further, RockHard Weekend includes the ingredients: Niacin, L-arginine,  
 12 Korean Ginseng, Gingko Biloba and Maca Root Extract. However, there is a lack of  
 13 adequate data to establish general recognition of the safety and effectiveness of any of  
 14 these ingredients, or any other ingredient, for OTC use as an aphrodisiac. 21 C.F.R. §  
 15 310.528. Labeling claims for aphrodisiacs for OTC use are either false, misleading, or  
 16 unsupported by scientific data. *Id.* Thus, based on the evidence currently available, any  
 17 OTC drug product containing ingredients for use as an aphrodisiac, including RockHard  
 18 Weekend, cannot be generally recognized as safe and effective. *See id.*

#### 19                                    California Sherman Law Violations

20        60. California Health and Safety Code, Division 104, Part 5, contains the  
 21 Sherman Food, Drug, and Cosmetic Law (“Sherman Law,” located at Cal. Health &  
 22 Safety Code §§ 109875-111915). The Sherman Law is explicitly authorized by the  
 23 FDCA. 21 U.S.C. § 343-1.

24 \_\_\_\_\_  
 25 <sup>24</sup> In addition to proving effectiveness, the manufacturer of a new drug must also prove  
 26 the drug’s safety, sufficient to meet FDA standards. 21 U.S.C. § 355(d).

1           61. The Sherman Law defines a “drug” as “any article other than food, that is  
2 used or intended to affect the structure or any function of the body of human beings or  
3 any other animal [emphasis added].” Cal. Health & Safety Code § 109925(c).

4           62. Each of the Products are labeled as “Fast & Effective,” “RockHard Results,”  
5 “DOCTOR TESTED,” “DOCTOR APPROVED,” “Sexual Performance Enhancer for  
6 Men,” and “ . . . an even bigger and better experience” which makes the Product  
7 unapproved new drugs that is accordingly misbranded under the California Sherman  
8 Law. Cal. Health & Safety Code §§ 110100, 110105, 110110, 110111.

9           63. Defendants’ marketing and promotion of the Products was supported by  
10 false and misleading claims containing material omissions and misrepresentations.

11           64. When purchasing the Product, Plaintiff and the class were seeking products  
12 that would provide the benefits, and possessed the efficacy and characteristics, as  
13 Defendants marketed, promised, represented and warranted.

14           65. Plaintiff and the class purchased the Product believing it had the qualities  
15 they sought, based on the Product’s deceptive labeling and marketing, but the Product  
16 was actually unacceptable to them as they did not possess the benefits, efficacy, and  
17 characteristics advertised.

18           66. In purchasing the Product, Plaintiff and members of the putative class  
19 reasonably relied upon the various representations Defendants made on the Product’s  
20 packaging and its prevalent advertising campaign, including online advertising, as  
21 described herein.

22           67. At all times relevant herein, Defendants had a duty to disclose additional  
23 and/or complete, accurate information to purchasing consumers, to correct all  
24 misunderstandings its omissions and misrepresentations created in the minds of those  
25 consumers.

1       68. Absent the misrepresentations and omissions described herein, which were  
2 and are material to the average consumer, Plaintiff and class members would not have  
3 purchased the Product.

4       69. Defendants are required to observe Good Manufacturing Practices (GMPs)  
5 under section 501(a)(2)(B) of the federal Food, Drug and Cosmetic Act, and its  
6 implementing regulation located at 21 C.F.R. § 211. This standard is mirrored under the  
7 California Sherman Law. Cal. Health & Safety Code § 110105.

8       70. When purchasing the Products, Plaintiff and Class members were seeking a  
9 male sexual enhancement remedy that would provide the benefits and had the  
10 endorsements, proof of efficacy, and characteristics that Defendants' Product marketed,  
11 promised, represented and warranted.

12       71. Plaintiff and Class members purchased RockHard Weekend believing they  
13 had the qualities represented on the Product's labeling, but the Product was actually  
14 unacceptable to him, as they did not possess the benefits, endorsements, proof, and  
15 characteristics as advertised.

16       72. Moreover, like all reasonable consumers and members of the Class, Plaintiff  
17 considers a label's compliance with federal law a material factor in his purchasing  
18 decisions. Plaintiff is generally aware the federal government carefully regulates OTC  
19 products and therefore has come to trust that information conveyed on packaged OTC  
20 product labels is truthful, accurate, complete, and fully in accordance and compliance  
21 with the law. As a result, Plaintiff trusts he can compare competing products on the basis  
22 of their labeling claims, to make a purchasing decision.

23       73. Like all reasonable consumers and members of the Class, Plaintiff would not  
24 purchase an OTC product he knew was misbranded under federal law, *see* 21 U.S.C. §  
25 352, which the federal government prohibits selling, *id.* § 331, and which carries with its



1 sale criminal penalties, *id.* § 333. See also Cal. Health & Safety Code §§ 110100,  
2 110105, 110110, 110111. Plaintiff could not trust that the label of a product misbranded  
3 under federal law is truthful, accurate and complete. In fact, the Defendants were  
4 promoting RockHard Weekend in violation of the FDCA, making the Product  
5 misbranded under California's Sherman Law.

6 74. Similarly, like all reasonable consumers and Class members, Plaintiff would  
7 not purchase an OTC product he knew was an illegally marketed new drug for which the  
8 FDA has not determined its safety and efficacy.

9 75. In light of the foregoing, reasonable consumers, including Plaintiff and other  
10 Class members, were and are likely to be deceived by Defendants' advertising and  
11 marketing practices as detailed herein.

12 76. Plaintiff and the Class will be exposed to the Product's false, deceptive, and  
13 unlawful labeling claims in the future when they visit retail stores for male sexual  
14 enhancement products unless Defendants agree, or is enjoined, to change the Product's  
15 labeling in response to Plaintiff's claims as set forth herein and in Plaintiff's CLRA  
16 notice letters.

17 77. Plaintiff and other Class members purchased the Product instead of  
18 competing products based on the false statements, misrepresentations and omissions  
19 described herein.

20 78. Instead of receiving a product that had the benefits, advantages,  
21 endorsements, proof, and characteristics as advertised, Plaintiff and other Class members  
22 received a product worth much less, or which was worthless, because the Product does  
23 not work; causes no effect or effects reverse of that advertised; and did not possess the  
24 characteristics, benefits, endorsements, and proof of efficacy, as advertised by  
25 Defendants.



1       79. At all times relevant herein, Defendants had a duty to disclose additional  
2 information to purchasing consumers, to correct all misunderstandings their omissions  
3 and misrepresentations created in the minds of those consumers.

4       80. Absent the misrepresentations and omission described herein, which were  
5 and are material to an average consumer, Plaintiff and other consumers would not have  
6 paid what they did for the Products.

7       81. Plaintiff and the Class lost money as a result of Defendants' deception in  
8 that Plaintiff and the Class did not receive what they had paid for.

9       82. Plaintiff and the Class altered their position to their detriment and suffered  
10 damages in an amount equal to the amount they paid for the Product over the class  
11 period.

12                                   **CLASS ACTION ALLEGATIONS**

13       83. Pursuant to Rules 23(a), (b)(3) and/or (b)(2) of the Federal Rules of Civil  
14 Procedure, Plaintiff brings this action on behalf of himself and a California consumer  
15 class initially defined as follows.

16       84. The Class is defined as:

17           All purchasers of Defendants' RockHard Weekend Product, and  
18           all iterations/variations of the aforementioned product, for  
19           personal or household use and not for resale, in California and  
20           the United States from August 21, 2009 to the present (the  
21           "Class Period"). Excluded from the consumer class are  
22           governmental entities, the Defendants, any entity in which the  
23           Defendants have a controlling interest, their employees,  
24           officers, directors, legal representatives, heirs, successors and  
25           wholly or partly owned subsidiaries or affiliated companies,

1 including parent corporations, class counsel and their  
2 employees; and the judicial officers and their immediate family  
3 members and associated court staff assigned to this case.

4 85. The proposed Class is so numerous that individual joinder of all its members  
5 is impracticable. Due to the nature of the trade and commerce involved, however,  
6 Plaintiff believes the total number of Class members is at least in the tens of thousands of  
7 persons in the State of California. While the exact number and identities of the Class  
8 members are unknown at this time, such information can be ascertained through  
9 appropriate investigation, discovery or Class definition. The disposition of the claims of  
10 the Class members in a single class action will provide substantial benefits to all parties  
11 and to the Court.

12 86. Pursuant to Rule 23(b)(2), Defendants have acted or refused to act on  
13 grounds generally applicable to the Class, thereby making final injunctive relief or  
14 corresponding declaratory relief and damages as to their Product appropriate with respect  
15 to the Class as a whole. Retrospective injunctive relief would seek a recall of the  
16 Product's false, deceptive and unlawful labeling and benefit the Class equally as a whole.  
17 Prospective injunctive relief would ensure that Class members are only exposed to  
18 lawful, truthful and non-misleading advertising of the Products in the future, which will  
19 also benefit each member of the Class in equal but indivisible measure. In particular,  
20 Defendants have misrepresented or failed to disclose the true nature of their Product  
21 being marketed and distributed, as detailed herein, through misrepresentations and  
22 omissions on the labeling, by which Defendants acted and refused to act on grounds  
23 generally applicable to the Class as a whole.

24 87. There is a well-defined community of interest in the questions of law and  
25 fact involved affecting Plaintiff and the Class and these common questions of fact and  
26

1 law include, but are not limited to, the following:

- 2 a. Whether the claims discussed above are true, misleading, or reasonably
- 3 likely to deceive an average consumer;
- 4 b. Whether Defendants' alleged conduct violates public policy;
- 5 c. Whether the alleged conduct constitutes violations of the laws asserted
- 6 herein;
- 7 d. Whether Plaintiff and class members are entitled to declaratory and
- 8 injunctive relief; and
- 9 e. The method of calculation and amount of restitution or damages to the Class.

10 88. Plaintiff's claims are typical of the Class members' claims. Plaintiff and all

11 Class members have been similarly affected by the Defendants' common course of

12 conduct because they all relied on Defendants' representations concerning their Product

13 and purchased the Product based on those representations.

14 89. Plaintiff will fairly and adequately represent and protect the interests of the

15 Class. Plaintiff has retained counsel with substantial experience in handling complex

16 class action litigation in general and scientific claims, including for homeopathic drugs,

17 in particular. Plaintiff and their counsel are committed to vigorously prosecuting this

18 action on behalf of the Class and have the financial resources to do so.

19 90. Plaintiff and Class members suffered and will continue to suffer harm as a

20 result of Defendants' unlawful and wrongful conduct. A class action is superior to other

21 available methods for the fair and efficient adjudication of the present controversy.

22 Individual joinder of all Class members is impracticable. Even if individual Class

23 members had the resources to pursue individual litigation, it would be unduly

24 burdensome to the courts in which the individual litigation would proceed. Individual

25 litigation magnifies the delay and expense to all parties in the court system of resolving

26

1 the controversies engendered by Defendants' course of conduct. The class action device  
 2 allows a single court to provide the benefits of unitary adjudication, judicial economy,  
 3 and the fair and efficient handling of all Class members' claims in a single forum. The  
 4 conduct of this action as a class action conserves the resources of the parties and of the  
 5 judicial system and protects the rights of Class members. Furthermore, for many if not  
 6 most, a class action is the only feasible mechanism that allows an opportunity for legal  
 7 redress and justice.

8 91. Adjudication of individual Class members' claims with respect to the  
 9 Defendants would, as a practical matter, be dispositive of the interests of other members  
 10 not parties to the adjudication, and could substantially impair or impede the ability of  
 11 other class members to protect their interests.

#### 12 **FIRST CAUSE OF ACTION**

#### 13 **VIOLATION OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT**

#### 14 ***California Civil Code §§ 1750, et seq.***

#### 15 **(On Behalf of Plaintiff and the Class, as Against All Defendants)**

16 88. Plaintiff repeats, realleges and incorporates by reference each and every  
 17 allegation contained above as if fully set forth herein.

18 89. This cause of action is brought pursuant to the Consumers Legal Remedies  
 19 Act, California Civil Code § 1750, *et seq.* (the "Act"). Plaintiff and Class members are  
 20 consumers as defined by California Civil Code § 1761(d). RockHard Weekend is a good  
 21 within the meaning of the Act.

22 90. Defendants violated and continue to violate the Act by engaging in the  
 23 following practices proscribed by California Civil Code §1770(a) in transactions with  
 24 Plaintiff and the Class, which were intended to result in, and did result in, the sale of the  
 25 Product.

1 • Representing that [RockHard Weekend has]...characteristics, ingredients,  
2 uses, benefits or quantities which [RockHard Weekend] does not have. (Civ. Code, §  
3 1770, subd. (a) (5).)

4 • Representing that [RockHard Weekend] is of a particular standard, quality or  
5 grade... if it is of another. (Civ. Code, § 1770, subd. (a) (7).)

6 • Advertising [RockHard Weekend] ...with intent not to sell the Product as  
7 advertised. (Civ. Code, § 1770, subd. (a) (9).)

8 • Representing that [RockHard Weekend] has been supplied in accordance  
9 with a previous representation when it has not. (Civ. Code, § 1770, subd. (a) (16).)

10 91. Defendants violated the Act by representing through advertising of  
11 RockHard Weekend as described above, when they knew, or should have known, the  
12 representations and advertisements were false or misleading.

13 92. Plaintiff and members of the Class reasonably relied upon the Defendants'  
14 representations as to the quality and attributes of RockHard Weekend.

15 93. Plaintiff and other members of the Class were deceived by Defendants'  
16 representations about the quality and attributes of RockHard Weekend, including but not  
17 limited to the purported benefits of RockHard Weekend, taken as a whole, that RockHard  
18 Weekend is an effective male sexual enhancement product. *See also* Exs. 1-3. Plaintiff  
19 and other Class members would not have purchased RockHard Weekend had they known  
20 Defendants' claims were untrue, and had they known the true nature of RockHard  
21 Weekend.

22 94. Pursuant to section 1782 *et seq.* of the CLRA, Plaintiff notified the  
23 Defendants in writing by certified mail of the particular violations of § 1770 of the CLRA  
24 as to RockHard Weekend, and demanded the Defendants rectify the problems associated  
25 with the actions detailed above and give notice to all affected consumers of their intent to  
26

1 so act. Defendants' wrongful business practices regarding RockHard Weekend  
 2 constituted, and constitute, a continuing course of conduct in violation of the California's  
 3 Consumers Legal Remedies Act because Defendants are still representing that RockHard  
 4 Weekend has characteristics, uses, benefits, endorsements, proof and abilities which are  
 5 false and misleading, and have injured Plaintiff and the Class. A copy of Plaintiff's  
 6 warning letter is attached as Exhibit 1.

7 95. Pursuant to California Civil Code § 1780(a), Plaintiff and the Class seek an  
 8 order of this Court enjoining the Defendants from continuing to engage in unlawful,  
 9 unfair, or deceptive business practices and any other act prohibited by law, and awarding  
 10 Plaintiff and the Class damages and punitive damages.

11 96. Pursuant to California Civil Code § 1782(d), Plaintiff and the Class seek a  
 12 Court order enjoining the above-described wrongful acts and practices of the Defendants  
 13 with respect to RockHard Weekend.

## 14 **SECOND CAUSE OF ACTION**

### 15 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

16 *California Business and Professions Code §§ 17200, et seq.*

17 **(On Behalf of Plaintiff and the Class, as Against All Defendants)**

18 97. Plaintiff repeats, realleges and incorporates by reference each and every  
 19 allegation contained above as if fully set forth herein.

20 98. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in  
 21 fact as a result of Defendants' actions as set forth herein. Specifically, prior to the filing  
 22 of this action, Plaintiff purchased the Product in reliance upon Defendants' marketing  
 23 claims. Plaintiff used the Product as directed, but the Product did not work as advertised,  
 24 nor provided any of the promised benefits.

1        99. California's Unfair Competition Law, Business and Professions Code §  
2 17200 (the "UCL") prohibits any "unfair, deceptive, untrue or misleading advertising."  
3 For the reasons discussed above, Defendants have engaged in unfair, deceptive, untrue  
4 and misleading advertising in violation of the UCL.

5        100. The UCL also prohibits any "unlawful... business act or practice."  
6 Defendants violated the UCL's prohibition against engaging in unlawful acts and  
7 practices by, *inter alia*, making the representations and omissions of material facts, as set  
8 forth more fully herein, and by violating among others, California Civil Code §§ 1572,  
9 1573, 1709, 1710, 1711, 1770, California Health and Safety Code §§ 109875, *et seq.*  
10 ("Sherman Law"), including but not limited to Cal. Health & Safety Code §§  
11 110100, 110105, 110110, 110111; Cal. Bus. & Prof. Code §§ 12601, *et seq.* ("Fair  
12 Packaging and Labeling Act"), California Commercial Code § 2313(1), and the common  
13 law; *see also* Cal. Health & Safety Code § 110105 (incorporating all FDCA laws and  
14 implementing regulations as the laws of this State). Such conduct is ongoing and  
15 continues to this date.

16        101. Plaintiff and the Class reserve the right to allege other violations of law  
17 which constitute other unlawful business acts or practices.

18        102. California Business and Professions Code § 17200 also prohibits any  
19 "unfair... business act or practice."

20        103. Defendants' acts, omissions, misrepresentations, practices and  
21 nondisclosures as alleged herein also constitute "unfair" business acts and practices  
22 within the meaning of the UCL in that their conduct is substantially injurious to  
23 consumers, offends public policy, and is immoral, unethical, oppressive, and  
24 unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to  
25 such conduct. Such conduct is ongoing and continues to this date.



1        104. Plaintiff alleges violations of consumer protection, unfair competition and  
2 truth in advertising laws in California and other states resulting in harm to consumers.  
3 Plaintiff asserts violation of the public policy of engaging in false and misleading  
4 advertising, unfair competition and deceptive conduct towards consumers. This conduct  
5 constitutes violations of the unfair prong of the UCL. Such conduct is ongoing and  
6 continues to this date.

7        105. There were reasonably available alternatives to further Defendants'  
8 legitimate business interests, other than the conduct described herein.

9        106. The UCL also prohibits any "fraudulent business act or practice."

10       107. Defendants' claims, nondisclosures (i.e., omissions), and misleading  
11 statements, as more fully set forth above, were false, misleading and/or likely to deceive  
12 the consuming public within the meaning of the UCL. Such conduct is ongoing and  
13 continues to this date.

14       108. Defendants' conduct caused and continues to cause substantial injury to  
15 Plaintiff and the other members of the Class. Plaintiff has suffered injury in fact as a  
16 result of Defendants' unfair conduct.

17       109. Defendants have thus engaged in unlawful, unfair and fraudulent business  
18 acts and practices and false advertising, entitling Plaintiff to injunctive relief against  
19 Defendants, as set forth in the Prayer for Relief.

20       110. Pursuant to Business and Professions Code § 17203, Plaintiff seeks an order  
21 requiring Defendants to immediately cease such acts of unlawful, unfair and fraudulent  
22 business practices and requiring Defendants to engage in a corrective advertising  
23 campaign, and make labeling changes. Plaintiff also seeks an order for retrospective  
24 injunctive relief to correct the consequences of Defendants' acts, *Podolsky v. First*  
25 *Healthcare Corp.*, 50 Cal. App. 4th 632, 656 (1996), such as restitutionary disgorgement

1 or creation of an impound fund, and a recall of the unlawful, false and deceptively  
2 labeled Product. *See also People v. Toomey*, 157 Cal.App.3d 1, 21 (1984).

3 111. Plaintiff also seeks an order for the disgorgement and restitution of all  
4 monies from the sale of Defendants' Product, a form of retrospective injunctive relief,  
5 and a remedy specifically provided by statute, which monies were unjustly acquired  
6 through Defendants' acts of unlawful, unfair, and/or fraudulent competition.

### 7 **THIRD CAUSE OF ACTION**

#### 8 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**

9 *California Business and Professions Code §§ 17500, et seq.*

10 **(On Behalf of Plaintiff and the Class, as Against All Defendants)**

11 112. Plaintiff repeats, realleges and incorporates by reference each and every  
12 allegation contained above as if fully set forth herein.

13 113. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in  
14 fact as a result of Defendants' actions as set forth herein. Specifically, prior to the filing  
15 of this action, Plaintiff purchased RockHard Weekend in reliance upon Defendants'  
16 marketing claims. Plaintiff and Class members used RockHard Weekend as directed, but  
17 the Product did not work as advertised, nor provided any of the promised benefits.

18 114. Defendants' business practices as alleged herein constitute unfair, deceptive,  
19 untrue, and misleading advertising pursuant to California Business and Professions Code  
20 §§ 17500, *et seq.* because Defendants have advertised RockHard Weekend in a manner  
21 they know is untrue or misleading, or that reasonably should have been known to  
22 Defendants to be untrue or misleading.

23 115. Defendants' wrongful business practices have caused injury to Plaintiff and  
24 the Class.

116. Pursuant to section 17535 of the California Business and Professions Code, Plaintiff and the Class seek an order of this court enjoining Defendants from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in the complaint.

117. Plaintiff and the Class also seek an order for the disgorgement and restitution of all monies from the sale of Defendants' Product, which were unjustly acquired through acts of unlawful, unfair, deceptive and/or fraudulent competition.

#### **FOURTH CAUSE OF ACTION**

#### **BREACH OF EXPRESS WARRANTY**

#### **(On Behalf of Plaintiff and the Class, as Against All Defendants)**

118. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

119. On the Product's label and through their marketing campaign as described above, Defendants made affirmations of fact or promises, or description of goods, which formed "part of the basis of the bargain" at the time of purchase.

120. The warranties were breached because the Products did not live up to their warranties, and that breach caused injury in the form of the lost purchase price for the Products. *See* Cal. Com. Code § 2313(1); *see also* *Zwart v. Hewlett-Packard Co.*, 2011 WL 3740805 (N.D. Cal., Aug. 23, 2011) (holding that online assertions can create warranties).

121. As a result of Defendants' breach of their warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Product they purchased.

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**FIFTH CAUSE OF ACTION**

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

**(On Behalf of Plaintiff and the Class, as Against All Defendants)**

122. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

123. Defendants, through their acts and omissions as set forth herein, in their sale, marketing and promotion of RockHard Weekend, made affirmations of fact or promises to Plaintiff and Class members that RockHard Weekend provides the claimed health benefits as discussed herein.

124. Plaintiff and the Class bought RockHard Weekend, which is manufactured, advertised and sold by Defendants.

125. Defendants are merchants with respect to the goods of this kind which were sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other members of the Class an implied warranty that those goods were merchantable for their intended use.

126. Defendants breached that warranty implied in the sale of goods, however, in that RockHard Weekend does not provide the claimed health benefits, as set forth in detail herein.

127. As a result of Defendants' conduct, Plaintiff and the Class did not receive goods as impliedly warranted by Defendants to be merchantable in that they did not conform to the promises and affirmations made on the container or label of the goods.

128. Plaintiff and the Class have sustained damages as a proximate result of the foregoing breach of implied warranty in an amount to be determined at trial.

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**SIXTH CAUSE OF ACTION**

**VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT,**

**15 U.S.C. §§ 2301, *et. seq.***

**(On Behalf of Plaintiff and the Class, as Against All Defendants)**

129. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained above as if fully set forth herein.

130. Plaintiff brings his claim individually and on behalf of the members of the Class.

131. Plaintiff and the Class assert state law warranty claims arising under the laws of the State of California, as allowed under Section 2310(d) of the MMWA.

132. In addition, Defendants' RockHard Weekend is a consumer product as defined in 15 U.S.C. § 2301(1).

133. Plaintiff and the other Class members are consumers as defined in 15 U.S.C. § 2301(3).

134. Defendants are suppliers and warrantors as defined in 15 U.S.C. §§ 2301(4) and (5).

135. In connection with the sale of the Product, Defendants issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that RockHard Weekend offers certain health results, and possessed certain attributes and qualities, as described herein, when in fact, this Product does not provide such results.

136. Defendants' warranties include, *inter alia*,

- "Doctor Tested"
- Doctor Approved"
- "No Side Effects"
- "Works in 30 Minutes"

- 1 • causes “Enhanced Orgasms”
- 2 • is “Fast & Effective”
- 3 • “RockHard Results”
- 4 • “bigger and better”
- 5 • “MAXIMUM performance,”
- 6 • “Enhance[] orgasms,”
- 7 • “All Natural”
- 8 • “RockHard Weekend”
- 9 • “The 72 Hour Sexual Performance Pill for Men” and “take one capsule
- 10 every 24 hours”.

11 137. By breaching the express written warranties as described herein, Defendants  
 12 violated the statutory rights of Plaintiff and Class members pursuant to the Magnuson-  
 13 Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, thereby damaging Plaintiff and other  
 14 Class members.

15 138. Plaintiff notified Defendants in writing of their claims and that the Plaintiff  
 16 is acting on behalf of the Class. *See* Ex. 1.

### 17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the  
 19 general public, prays for judgment and relief against Defendants as follows:

20 A. An order declaring this action to be a proper Class Action and requiring  
 21 Defendants to bear the costs of Class notice;

22 B. An order awarding Plaintiff and the proposed Class members damages under  
 23 the MMWA in an amount to be determined at trial;

24 C. An order awarding declaratory relief, retrospective and prospective  
 25 injunctive relief as permitted by law or equity, including enjoining Defendants from

1 continuing the unlawful practices as set forth herein, and injunctive relief to remedy  
2 Defendants' past conduct;

3 D. An order awarding restitution of the purchase price of the Product to  
4 Plaintiff and the proposed Class members; and restitutionary disgorgement of  
5 Defendants' revenues from all the RockHard Weekend purchases made by Plaintiff and  
6 proposed Class members under the UCL, CLRA and FAL;

7 E. An order awarding damages under Plaintiff's and the Class' CLRA and  
8 implied warranty claims for relief regarding RockHard Weekend, in an amount to be  
9 determined at trial;

10 F. An order awarding damages under Plaintiff's and the Class' express  
11 warranty claims for relief regarding RockHard Weekend, in an amount to be determined  
12 at trial;

13 G. An order for damages and punitive damages to Plaintiff and the Class under  
14 the CLRA claims for relief regarding RockHard Weekend, in an amount to be determined  
15 at trial;

16 H. An order compelling Defendants to engage in a corrective advertising  
17 campaign to inform the public concerning the true nature of RockHard Weekend,  
18 including a recall of the falsely labeled Product.

19 I. An order awarding attorneys' fees and costs to Plaintiff and the Class;

20 J. An order providing for all other such equitable relief as may be just and  
21 proper.

22 ///

23 ///

24 ///

25 ///



**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all causes of action so triable.

DATED: October 11, 2013

Respectfully Submitted,

/s/ Ronald A. Marron  
RONALD A. MARRON

**THE LAW OFFICES OF  
RONALD A. MARRON, APLC**  
RONALD A. MARRON  
SKYE RESENDES  
ALEXIS M. WOOD  
651 Arroyo Drive  
San Diego, California 92103  
Telephone: (619) 696-9006  
Facsimile: (619) 564-6665

*Counsel for Plaintiff and  
the Proposed Class*

1 I, Kenneth Dorsey, declare as follows:

2 1. I am the Plaintiff in this action. I make this affidavit as required by  
3 California Civil Code Section 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of  
5 this action because Defendant is doing business in this county.

6 I declare under penalty of perjury under the laws of the United States that  
7 the foregoing is true and correct.

8

9 Dated: 9/4, 2013

10



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Kenneth Dorsey

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AFFIDAVIT OF VENUE

733 S. Hindry Ave.  
Inglewood, CA 90301  
Phone: 310-348-7600  
Fax: 310-348-8619  
www.usvetsinc.org

**U.S. VETS-  
INGLEWOOD**

# Fax

To: <u>Kas Gallucci</u>	From: <u>Ker Dorsey</u>
Fax: <u>619-564-6665</u>	Pages: <u>2</u>
Phone: <u>619-696-9006</u>	Date: <u>9/1/13</u>
Re: <u>Affidavit of Venue</u>	<u>cc</u>
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle	

• Comments: Information your law office requested

Thanks  
Ker Dorsey

# **EXHIBIT 1**

Law Offices of  
**Ronald A. Marron**  
A Professional Law Corporation

651 Arroyo Drive  
San Diego, CA 92103

Tel: 619.696.9006  
Fax: 619.564.6665

August 21, 2013

**Via: Certified Mail, (receipt acknowledgment with signature requested)**

**RockHard Laboratories LLC**  
**RockHard Laboratories Holdings LLC**  
Attn: LEGAL DEPARTMENT  
3400 Old Milton Parkway, Bldg. C, Suite 330  
Alpharetta, Georgia 30005

***RE: NOTICE: Violations of the California Consumer Legal Remedies Act and  
Duty to Preserve Evidence***

Dear Sir or Madam,

**PLEASE TAKE NOTICE** that this letter constitutes notice under the California Consumer Legal Remedies Act, ("CLRA"), California Civil Code Section 1750, *et seq.*, (the "ACT") — pursuant specifically to Civil Code Section 1782 — notifying **RockHard Laboratories LLC** and **RockHard Laboratories Holdings LLC** (collectively, "YOU" and "YOUR") of violations of the Act and of our demand that YOU remedy such violations within thirty (30) days from your receipt of this letter.

This firm represents Mr. Kenneth Dorsey. Mr. Dorsey purchased Rockhard Weekend ("Product") approximately 6 times from a store in the city of Los Angeles, California between the time frame of around April 2011 and June 2011. Mr. Dorsey was exposed to and saw YOUR claims about the Product, purchased the Product in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising.

YOU falsely advertise and market RockHard Weekend by putting false and misleading claims on the label that the Product enhances male sexual performance, among other representations. However, the truth is that RockHard Weekend does not enhance male sexual performance or sexual pleasure as the advertising states or suggests.

YOU also falsely and deceptively claim that there is a scientific and/or research basis for YOUR claims about RockHard Weekend, through use of the phrases "Doctor Tested," and "Doctor Approved" in all caps font on the front of each package. Further, YOU claim that RockHard Weekend "may [be] use[d] with Alcohol," has "No Side Effects," "Works in 30 Minutes," causes "Enhanced Orgasms," is "Fast & Effective," providing "RockHard Results,"

none of which would be possible to know unless YOU had tested the Product, expressly and impliedly asserting to consumers that YOU have a reasonable basis to make those claims.

In fact, none of the ingredients in RockHard Weekend have been shown by any scientific human study to enhance male sexual performance, in particular, when present in the miniscule quantities contained in the Product. RockHard Weekend purportedly contains 850 mg of a proprietary blend of L-arginine, Korean Ginseng, Gingko Biloba, Maca Root Extract, and 15 mg of Vitamin B3 in one capsule. But the consumption of the heterogeneous herbs and herbal extracts such as Korean Ginseng, Gingko Biloba and Maca Root Extract presents a risk of an allergic or other adverse reaction without any offsetting benefit.

In fact, Korean Ginseng may cause dangerously low blood sugar levels, especially in people with diabetes, according to the National Institute of Health. Korean Ginseng can also cause nausea, diarrhea, headaches, nose bleeds, high blood pressure, and low blood pressure. Also, the Gingko Biloba in RockHard Weekend contains ginkolic acids, which are highly allergenic, as well as long-chain alkylphenols such as bilobol, which are closely related to inflammatory molecules found in poison ivy. All of these may produce dangerous and possibly life-threatening reactions to the Product.

YOU also falsely and deceptively market the Product by labeling a single pill as “The Weekender” pill, for a “RockHard Weekend,” and “The 72 Hour Sexual Performance Pill for Men.” But there is no evidence that a single capsule of RockHard Weekend provides enhanced sexual performance for a weekend, which is a period of time from 48 to 72 hours, and the small print on the back of the packaging admits as much, stating “take one capsule every 24 hours.”

YOU also falsely and deceptively market the Product by putting the false and misleading claim of “All Natural” on the label. But the L-arginine in the Product is chemically synthesized for use in RockHard Weekend, and the Product contains magnesium stearate, silicon dioxide, and FD&C Blue #1, all of which are synthetic ingredients not found in nature or derived from natural processes. In fact, the latter two ingredients are carcinogenic. Thus, YOUR claim that RockHard Weekend is “All Natural” is completely false and deceptive.

Moreover, YOUR labeling claims, as a whole and taken in context, as set forth above, including that the Product will give a man a “Rock Hard” erection, that is “bigger and better,” available “on-demand,” will “maintain MAXIMUM performance,” and “Enhance[] orgasms” are not only false and deceptive, but unlawful aphrodisiac claims that violate the federal Food, Drug and Cosmetic Act (*see* 21 C.F.R. 310.528) and accordingly violate the California Sherman Food, Drug and Cosmetic Law (*see* Cal. Health & Safety Code, Div. 104, Part 5).

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the

truth regarding YOUR products or services.

In conclusion, YOUR material misrepresentations are deceiving customers into purchasing YOUR Product under the representation that RockHard Weekend capsules provide enhanced male sexual performance, when in fact they do not.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices in violation of the CLRA include, but are not necessarily limited to:

§ 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

§ 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.

§ 1770(a)(9): advertising goods with intent not to sell them as advertised.

§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and products.

Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies available for violations of the CLRA, which would be requested in a class action complaint on behalf of our client, Mr. Dorsey and all other similarly-situated U.S. residents:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. See, e.g., *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages,



and laboratory records that related to the formulation and marketing of YOUR products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

In addition, California Civil Code Section 1780 (b) provides in part that: “Any consumer who is a **senior citizen or a disabled person**, as defined in subdivision (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedied specified therein, up to **five thousand dollars (\$5,000)** . . .” (emphasis added).

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

THE LAW OFFICES OF RONALD A. MARRON APLC

/s/ Ronald A. Marron

Ronald A. Marron

Attorney for Kenneth Dorsey, all others similarly situated,  
and the general public

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <b>X</b> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:  <b>RockHard Laboratories LLC  RockHard Laboratories Holdings, LLC  Attn: LEGAL DEPARTMENT  3400 Old Milton Parkway, Bldg. C, Suite 330  Alpharetta, Georgia 30005</b>		B. Received by (Printed Name) C. Date of Delivery	
2. Article Number (Transfer from service label) <b>7009 1680 0001 2361 3375</b>		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-1540	


PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

**CERTIFIED MAIL™**



7009 1680 0001 2361 3375  
7009 1680 0001 2361 3375

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ <b>4.66</b>
Certified Fee	<b>3.10</b>
Return Receipt Fee (Endorsement Required)	<b>2.55</b>
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ <b>10.31</b>
Sent To <b>RockHard Laboratories LLC</b> <b>Attn: Legal Dept</b> Street, Apt. No., or PO Box No. <b>3400 Old Milton Pkwy, Bldg C</b> City, State, ZIP+4 <b>Alpharetta GA 30005</b>	
PS Form 3800, August 2006 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature    <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Addressee </p>	
<p>1. Article Addressed to:</p> <p><b>RockHard Laboratories LLC</b>  <b>RockHard Laboratories Holdings, LLC</b>  Attn: LEGAL DEPARTMENT  3400 Old Milton Parkway, Bldg. C, Suite 330  Alpharetta, Georgia 30005</p>		<p>B. Received by (<i>Printed Name</i>)  <b>J. Lafave</b></p> <p>C. Date of Delivery  <b>8/27/13</b></p>	
		<p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p>	
		<p>4. Restricted Delivery? (<i>Extra Fee</i>) <input type="checkbox"/> Yes</p>	
<p>2. Article Number  (<i>Transfer from service label</i>)</p>		<p><b>7009 1680 0001 2361 3375</b></p>	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Dean D. Pregerson and the assigned Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

2:13-cv-07557 DDP-RZx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

October 11, 2013

Date

By SBOURGEOIS  
Deputy Clerk

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NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

**Subsequent documents must be filed at the following location:**

☒ Western Division  
312 N. Spring Street, G-8  
Los Angeles, CA 90012

☐ Southern Division  
411 West Fourth St., Ste 1053  
Santa Ana, CA 92701

☐ Eastern Division  
3470 Twelfth Street, Room 134  
Riverside, CA 92501

**Failure to file at the proper location will result in your documents being returned to you.**

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

KENNY DORSEY, individually and on behalf of all  
others similarly situated and the general public,

*Plaintiff(s)*

v.

ROCKHARD LABORATORIES, LLC, a Georgia  
Limited Liability Company, and ROCKHARD  
LABORATORIES HOLDINGS, LLC, a Georgia  
Limited Liability Company

*Defendant(s)*

Civil Action No.

CV13-7557 DDP-RZx

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

LAW OFFICES OF RONALD A. MARRON, APLC  
Ronald A. Marron (SBN 175650)  
651 Arroyo Drive  
San Diego, California 92103  
Tel.: (619) 696-9006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: \_\_\_\_\_

OCT 11 2013

CLERK OF COURT



Signature of Clerk Deputy Clerk

1184

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**I. (a) PLAINTIFFS** (Check box if you are representing yourself ☐)

KENNY DORSEY, individually and on behalf of all others similarly situated an the general public

**DEFENDANTS** (Check box if you are representing yourself ☐)ROCKHARD LABORATORIES, LLC, a Georgia Limited Liability Company, and  
ROCKHARD LABORATORIES HOLDINGS, LLC, a Georgia Limited Liability Company

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

LAW OFFICES OF RONALD A. MARRON, APLC  
651 Arroyo Drive  
San Diego, California 92103  
Tel.: (619) 696-9006

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☐ 2. U.S. Government Defendant
- ☐ 3. Federal Question (U.S. Government Not a Party)
- ☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**—For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. ORIGIN** (Place an X in one box only.)

- ☒ 1. Original Proceeding
- ☐ 2. Removed from State Court
- ☐ 3. Remanded from Appellate Court
- ☐ 4. Reinstated or Reopened
- ☐ 5. Transferred from Another District (Specify)
- ☐ 6. Multi-District Litigation

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION under F.R.Cv.P. 23:** ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ over 5,000,000.00**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

CIV code 1750; B: P Code 17200 &amp; 17500; 15 USC 2301

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<b>Habeas Corpus:</b>	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b>	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 530 General	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<b>Other:</b>	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<b>BANKRUPTCY</b>	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<b>FEDERAL TAX SUITS</b>
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<b>CIVIL RIGHTS</b>	<b>FORFEITURE/PENALTY</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<b>REAL PROPERTY</b>	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<b>LABOR</b>	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 751 Family and Medical Leave Act	
				<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number:

CV13-7557



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>Question A: Was this case removed from state court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

<b>Question B: Is the United States, or one of its agencies or employees, a party to this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:	
	A PLAINTIFF?	A DEFENDANT?		
	Then check the box below for the county in which the majority of DEFENDANTS reside.		Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western	
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western	
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern	
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern	
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western		

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>C.1. Is either of the following true? If so, check the one that applies:</b> <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D  Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	<b>C.2. Is either of the following true? If so, check the one that applies:</b> <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C  Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

<b>Question D: Initial Division?</b> Enter the initial division determined by Question A, B, or C above: →	INITIAL DIVISION IN CACD Western Division
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CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): /s/ Ronald A. Marron

DATE: October 11, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))